

*These minutes were approved at the May 25, 2022 meeting.*

**TOWN OF DURHAM  
DURHAM PLANNING BOARD  
SPECIAL MEETING**

**Wednesday April 20, 2022  
Town Council Chambers, Durham Town Hall  
7:00 pm**

**MEMBERS PRESENT:** Paul Rasmussen (Chair), Lorne Parnell (Vice-Chair), Heather Grant, James Bubar, Sally Tobias (Council Rep), William McGowan, Nicholas Germain (Alternate), Barbara Dill (Alternate), Chuck Hotchkiss (Alternate); Richard Kelley (late), Emily Friedrichs (Alternate-late)

**ALSO PRESENT:** Town Planner Michael Berendt

**I. Call to Order**

Chair Rasmussen called the meeting to order at 7:00 pm.

**II. Roll Call and Seating of Alternates**

Chair Rasmussen took roll call: Seated Nicholas Germain for Richard Kelley until his arrival.

**III. Approval of Agenda**

***Mr. McGowan MOVED to approve the Agenda as distributed and noted that Item IX was postponed by the applicant; SECONDED by Mr. Bubar; APPROVED by a vote of 7-0, Motion carries.***

**IV. Town Planner's Report**

Richard Kelley arrived at the Planning Board meeting at 7:01 pm.

Town Planner Michael Behrendt said as stated 19 Main Street was postponed to May 11, 2022 at applicant's request. Meeting April 27, 2022: Durham Point Road CU, 52 Oyster River Road for permitted use B, 74 Main Street; meeting May 11, 2022: Mill Plaza Redevelopment, 19 Main Street, 190 Piscataqua Road permitted use B, election of officers and committee appointments. He said he is expecting the Food Truck application for across the street, and Mark Henderson is considering a new program at Dover Road and Old Landing Road.

Vice-Chair Parnell asked about Mill Plaza and a comment in Friday Updates about the Town getting some legal advice in that regard. Mr. Behrendt said the message was simply noting to the public that the Planning Board had voted on Mill Plaza CU for Mixed Development and the motion failed 4-3, and Mr. Taintor and the Town Administrator reached out to coordinate with Town Attorney Laura Spector for next steps about Mill Plaza as the situation is unusual. Vice-Chair Parnell asked that comments be sent to the Board before the May 11<sup>th</sup> meeting.

**V. Reports from Board Members who serve on Other Committees**

Reporting from the Town Council: Councilor Tobias said the Council met Monday and Jim Lawson brought his edits on the proposed Solar System Ordinance; the Council plans to hold a Public Hearing for comments, make any changes, and forward to the Planning Board. She said Durham Day is June 4, 2022 and the Council is looking for all business organizations, committees, and commissions to participate.

Mx. Friedrichs arrived at the Planning Board meeting at 7:08 pm.

Ms. Dill said she is not representing a committee but since the Board does not currently have a representative to the Energy Committee, she wanted to put in a plug for the Solar Tour on Saturday, April 23, 2022 at 2:00 pm. Mx. Friedrichs said ze signed up and planned to be at the event.

**VI. Public Comments – None**

**VII. Public Hearing – Laurel Lane Lot Line Adjustment.** Lot line adjustment between 31 Laurel Lane, Map 6, Lot 10-5, owned by Donald and Elizabeth Glover and 23 Laurel Lane, Map 6, Lot 10-4, owned by Jonathan and Caroline Caron. The owners are exchanging two parcels of 2,405 square feet to remove an encroachment. Peter Landry, Landry Surveying, Residence B Zone. Recommended action: Final action.

Chair Rasmussen said typically there is a slight introduction on the project, the Public Hearing is opened and closed, and then the Planning Board will make a decision.

Mr. Glover said he and his neighbor Jonathan Caron are recent buyers in Durham and Mr. Caron hired surveyor Peter Landry due to concerns about his neighbor on the other side planting trees on his property. He said when he returned from Florida the lot line went right through his turnaround for his driveway, and they were trying to do a simple land swap to change the lot line for their deeds.

Vice-Chair Parnell asked when Mr. Glover's home was built, and he said 1970. Mr. Bubar asked if the Board had all the paperwork, and Mr. Behrendt they did.

***Vice-Chair Parnell MOVED to open the Public Hearing on Laurel Lane Lot Line Adjustment; SECONDED by Ms. Grant; APPROVED by a vote of 7-0, Motion carries.***

The Public Hearing on Laurel Lane Lot Line Adjustment was opened at 7:17 pm.

***Vice-Chair Parnell MOVED to close the Public Hearing on Laurel Lane Lot Line Adjustment seeing no one from public wishing to speak; SECONDED by Ms. Grant; APPROVED by a vote of 7-0, Motion carries.***

The Public Hearing on Laurel Lane Lot Line Adjustment was closed at 7:18 pm.

Mr. Kelley said he assumed there is a written instrument that gets recorded along with the plan, and asked for confirmation that both landowners are in agreement with what is shown on the plan. Mr. Glover said they are in agreement. Mr. Kelley asked if there was something noted that allowed Mr. Landry to act on behalf of both owners; Mr. Behrendt said he has signatures of both owners and Mr. Landry on the application, and attests that Mr. Landry is duly authorized to act in that capacity.

***Vice-Chair Parnell MOVED that the Planning Board approve the Lot Line Adjustment between 23 Laurel Lane, Map 6, Lot 10-4 owned by Jonathan and Caroline Caron and 31 Laurel Lane, Map 6, Lot 10-5 owned by Donald and Elisabeth Glover; SECONDED by Ms. Grant;***

Discussion: Mr. Kelley asked about the Board reviewing conditions that were put together by Mr. Behrendt; Chair Rasmussen said there was just the deed, final drawings, and the recording. Mr. Kelley asked Mr. Behrendt if his comments in his Notice of Decision had been addressed by the applicant, and Mr. Behrendt said they still need to do that as a final revised plan.

Vice-Chair Parnell added to his motion: ***subject to the conditions outlined in Notice of Decision of April 20, 2022.***

***Vice-Chair Parnell MOVED that the Planning Board approve the Lot Line Adjustment between 23 Laurel Lane, Map 6, Lot 10-4 and 31 Laurel Lane, Map 6, Lot 10-5 as amended above to include: subject to the conditions outlined in Notice of Decision of April 20, 2022; SECONDED by Ms. Grant; APPROVED as amended by a vote of 7-0, Motion carries.***

**VIII. Public Hearing - 32-34 Madbury Road – Expansion of Apartments.** Site Plan and Conditional Use Application for new 3-story building with 6 dwelling units and 17 beds (at northeast corner of Garrison Avenue intersection). The existing apartment which is a nonconforming use can be expanded up to 50% by conditional use. AAM Durham Residences, LLC, property owner, c/o Craig Pfannenstiehl and Megan Thayer. Mike Sievert, Horizons Engineering, engineer. Market Square Architects, architect. Robbi Woodburn, Landscape Architect. Map 2, Lot 10-3. Professional Office District.  
Recommended action: Final action.

Mike Sievert said he updated the architectural drawings from the Site Plan, talked about finalizing Stormwater, and met with DPW who had no issues with drainage. He said some bike racks were moved and some were added to an indoor storage area. Mx. Friedrichs asked the number of bikes and said Town site plan regulations require bike parking for 1/3 the number of residents. Mr. Sievert said there are 4 spots along the walkway too close to the entrance to cover, and a space inside a storage room for bikes in winter, and said he generally felt bikes were not used. Chair Rasmussen said the number in the site regulations should probably be reduced and the Board

might take a look at micro-transportation and what is used in the town for their Fall Workshop. Mr. Behrendt asked that the number and location of bikes be noted on the plan, and state that the lower level in back is at grade and not in basement.

Mr. Sievert said he provided a sample of a paver; on the Landscape Plan some plantings in front of the building were changed to another species; the front and front sides of the parking lot will be screened from the public way; added space to a tree on the parking lot side closest to the building and changed type of tree to provide more shade. He said snow storage was modified as it conflicted with some of the landscaping, and lighting was reduced in intensity. The parking lot yield sign at entrance/exit was changed to a stop sign; he showed the dumpster with details for new pad and construction and added screening. He said a recycling plan, energy checklist, and waiver for impact fees were submitted.

Mr. Sievert said they are coordinating with the Public Works Department on a project which is now in the preliminary stages of development for improvements to Madbury Road and discussed whether sidewalks would need to be reconstructed and the possibility of easements in from of the property. They also talked about the stormwater pond which is graded right to the property line: instead of complete redesign, it would be moved back and a small retaining wall added; a catch basin will be moved down to the corner and may need relocation in future, but DPW did not feel there was any negative aspect of this design to what they are doing.

Mr. Kelley asked Mr. Behrendt about the slope going in and out of the stormwater pond, and Mr. Behrendt said it was a 3:1 slope. Mr. Sievert said Phase I of the construction phasing plan would be to relocate the drainage tied to the Town drainage system; drains to catch basin, roof drainage, and foundation drainage in the corner all have to be relocated for construction of the building; Phase I will relocate utilities and reinstall sewer line and gas lines; a new construction entrance and lawn area will be used as a staging area.

Mr. Sievert said Phase II would include putting in Stormwater and grading, then the foundation for the building, then the building construction; the parking lot will be finalized on a 1-year construction timeframe. Vice-Chair Parnell asked about access to the existing parking lot and Mr. Behrendt said it would be utilized by some of the residents. and said the color and intensity of the lighting was changed and brought to a yellower tone.

Questions: Mx. Friedrichs asked the square footage of the paved surface in terms of increased impervious surface on the lot. Mr. Sievert said the total impervious surface ratio pre-development was 42.2% and will be 49.9% post-development; the zoning max is 50%. He said the walkway to the dumpster added impervious surface to the total; an option might be making the patio pervious with an underdrain tied to the stormwater pond.

Mx. Friedrichs said part of the Zoning Ordinance states that with enlargement of a non-conforming use, the land area is not increased by 50%, and asked if the drainage applies here. Mr. Behrendt said the Board has applied this based on the building size itself since the applicant

is not expanding beyond the lot and did not feel it refers to the developed area on a lot being confined to 50%. He said in this case the square footage of the building, number of units, and number of beds do not exceed 50%.

Mx. Friedrichs asked about Madbury Road setbacks from the front and said the Zoning Ordinance says 50 ft for arterial streets. Mr. Behrendt said Madbury Road is a collector and not arterial requiring a 30-ft setback. Mr. Kelley asked about heating and Mr. Sievert said that has not yet been determined. Mr. Behrendt said it is proposed to be heated by gas; Mr. Kelley said there is an opportunity for those areas to be heated by heat pumps. Mr. Sievert said the area could be for condensers or heat pumps with screening in front.

***Vice-Chair Parnell MOVED to open the Public Hearing for 32-34 Madbury Road – Expansion of Apartments; SECONDED by Councilor Tobias; APPROVED by a vote of 7-0, Motion carries.***

The Public Hearing for 32-34 Madbury Road–Expansion of Apartments was opened at 8:03 pm.

Vice-Chair Parnell said the Board received a letter from a resident of Madbury Road concerned about more large student housing in the downtown area, and asked that under Conditions the applicant be *required* to inspect and clean up the site as needed, and also stated that he would put in a condition that on-site professional security monitoring be provided for a building this size on a regular basis. The Board discussed what oversight they would like to see on the site and Mr. Behrendt reviewed the TRG conditions. Ms. Thayer said they do have a property manager and Police have his contact number.

Christine Castaldo of Market Square Architects reviewed the building and most has been seen previously. She reviewed first floor plans, second floor plans, third floor plans, and the roof plan, and said the only change since last time is that they spaced the front windows above the door farther apart with 7.5-inch trim between. She said the front, rear, and side elevations have not changed.

Vice-Chair Parnell asked if there was intent to tie the two buildings together at some point. Ms. Castaldo said the initial design did tie the two together, but it was not well received, and we moved away from that design. Mr. Pfannenstiehl said they hope to update the existing building in the future, possibly re-siding the existing building during construction. The Board discussed the issues, and Mr. Behrendt recommended replacing the vinyl siding with Hardie board.

Ms. Castaldo said for the new building they are proposing Andersen 100 Series windows with divided lights inside and outside of the glass, and Hardie clapboard in gray slate and arctic white. Ms. Dill asked about the different textures of Hardie board and felt the smooth side looked better. Ms. Castaldo said there is not really a back side of the clapboard and it either comes textured or smooth and the back side is never exposed. The Board discussed the textures and

colors and Chair Rasmussen said he did not think it was the Board's call, but Mr. Behrendt said it is all part of the architecture.

Mx. Friedrichs asked the applicant about possibly reducing the parking being provided here, as this is CU and the Town is looking for a positive fiscal impact. Mr. Behrendt said currently parking spaces are 1:1 per resident, are actually going down to 0.78, and are within CU. Mr. Sievert said they are going from 38 to 40 parking spaces. The Board discussed the existing parking lot, and Mr. Sievert said that lot does not meet requirements and parking spaces are diagonal which represents a one-way traffic pattern.

Mr. Sievert said he changed the Madbury Road parking lot to a double-loaded lane which meets the requirements. Mr. Behrendt asked that the aisle width be reduced from 24 ft to 22 ft in the new parking lot. Mr. Kelley said that will mean less cost to the applicant and gives us more buffer with the 49.9% impervious ratio.

Mr. Kelley asked for a timetable on this project and Ms. Thayer said they planned to start sitework by mid-June or July, start construction right after that, and have them online for July 15, 2023, contingent on materials and costs. She said construction of building is September/October but not much later due to weather, and they may be able to start construction sooner.

Mr. Behrendt reviewed changes so far on the draft: 22-ft aisle in new parking lot which requires a waiver; School impact fee waiver; show location of inside bike parking on plan; change number 47 to read: *applicant shall inspect and clean up site Friday, Saturday, and Sunday*. Mr. Bubar said perhaps there should be a sunset provision for start of construction. Mr. Behrendt said the CU Ordinance says it is a year unless a different timeframe is specified and suggested 36 months; Chair Rasmussen added if substantial construction is not started within that time then you lose approval.

Mr. Kelley said he wanted to make sure any revisions to construction plans will be brought before the Planning Board and asked about access to the back building during construction. Mr. Sievert said that is why he is doing Phase I ahead of time because it is right in that corner; once out of that corner there will still be pedestrian access but vehicles only on east side. He said there are 3 egress areas, 2 on west and 1 on north, and one south off Garrison. Mr. Kelley suggested the site contractor add a provision to provide safe pedestrian egress during construction.

***Mr. Kelley MOVED to close the Public Hearing for 32-34 Madbury Road – Expansion of Apartments; SECONDED by Mr. Bubar; APPROVED by a vote of 7-0, Motion carries.***

Chair Rasmussen closed the Public Hearing for 32-34 Madbury Road at 8:53 pm.

### **Conditional Use Criteria for Non-Conforming Use**

**1. Site Suitability:** Is the site suitable for proposed use with adequate access, public services, environmental constraints, and utility availability.

Mr. Kelley said he finds the site suitable for this use as well as adjacent sites. Chair Rasmussen said the site is already being used for this purpose and is just an expansion. Mr. Bubar felt it was an improvement of environmental constraints with more water infrastructure and less runoff.

**2. External Impacts:** External impacts of proposed use on abutting properties and neighborhood no greater than existing or permitted uses in the zone.

Chair Rasmussen said structures across Garrison and diagonal across the intersection are both comparable in scale. Mr. Bubar said only two parking spaces will be added, and Ms. Grant said the landscaping will also be improved. Councilor Tobias said the site is surrounded by the same uses and is an improvement of the site with better use of space. Mr. Kelley agreed and said it places a building structure with a relationship to the street front.

**3. Character of Site Development:** Layout and design of site not incompatible with established character of the neighborhood; mitigate any external impacts.

Chair Rasmussen said everything done here is fine, with buffered sidelines and the building presented to the streets.

**4. Character of Buildings and Structures:** Design of any new buildings and modifications of existing buildings/structures on site not incompatible with established character of the neighborhood.

Chair Rasmussen said he was happy in this case that they went to a brand-new building rather than putting an addition on the existing. Mr. Kelley said it compliments the neighborhood and adds to it. Mx. Friedrichs said it was a real improvement to this particular lot.

**5. Preservation of Resources:** Preservation of natural, cultural, historic, and scenic resources on the site and not degrade resources on abutting properties.

The Board agreed this was not applicable.

**6. Impact on Property Values:** Proposed use will not contribute to decline in property values of adjacent properties.

Councilor Tobias said the proposed use will be a positive.

**7. Availability of Public Services & Facilities:**

Chair Rasmussen said this is approved and assured and everything is on public services.

**8. Fiscal Impact:** Proposed use will not have a negative fiscal impact on the Town unless Planning Board determines otherwise.

Chair Rasmussen said he saw no detriments here and it will be increasing the tax value. Councilor Tobias felt the property value would definitely increase. Mx. Friedrichs asked about security and police protection in a private rental, and Chair Rasmussen said that is up to the lease agreement and asked if Mr. Sievert could speak to this. Mr. Behrendt said the Board can reopen the Public Hearing in the same evening.

***Mr. Kelley MOVED to approve a CU application for a new 3-story building with 6 dwelling units and 17 beds at the corner of Garrison Avenue intersection Map 2, Lot 10-3, located in professional office district known as 32-34 Madbury Road; SECONDED by Vice-Chair Parnell; APPROVED by a vote of 7-0, Motion carries.***

#### **Draft Notice of Decision**

Mr. Behrendt said changes include reducing the parking lot aisle to 22 ft, and the Board can vote on the waiver or it can be incorporated; the waiver will be granted consistent with “a finding that strict conformity would create an unnecessary hardship to the applicant” and the reason to reduce to 22 ft because “specific circumstances relative to the site plan indicate that waiver will properly carry out spirit and intent of these regulations”.

Mr. Behrendt said a note needs to be added on the plan clarifying where bike inside storage will be; correct the note to 23 Madbury Road; specify number 47 to state: *applicant shall inspect and clean up site Friday, Saturday, and Sunday.*

Chair Rasmussen asked about the 40 parking spaces being provided as site plan regulations require 51. Mr. Behrendt said it does not allow more parking spaces than 2 per unit. Vice-Chair Parnell said there is also a waiver for School Impact Fees, and Chair Rasmussen said School Impact Fees are already built into the Notice of Decision.

Mr. Kelley said the Board will want a note on additional plan modifications to C-105 Construction Phasing Plan regarding provision of pedestrian access to building egress areas. He also asked Mr. Behrendt why an application has to be sent to the NHDES for a sewer connection permit; Mr. Behrendt said it is perfunctory mainly to the Town, but DES also issues approval for sewer connections.

***Mr. Kelley MOVED to re-open the Public Hearing for 32-34 Madbury Road – Expansion of Apartments; SECONDED by Mr. Bubar; APPROVED by a vote of 7-0, Motion carries.***

Public Hearing for 32-34 Madbury Road was re-opened at 9:15 pm.



Mr. Sievert said the applicant does not need an NHDES Sewer Permit because it will be under 5,000 gals/day increase and/or no pump station, or it could stay on the notice and specify whether it is applicable.

***Ms. Grant MOVED to close the Public Hearing for 32-34 Madbury Road – Expansion of Apartments; SECONDED by Councilor Tobias; APPROVED by a vote of 7-0, Motion carries.***

Public Hearing for 32-34 Madbury Road was closed at 9:16 pm.

***Mr. Kelley MOVED to approve 32-34 Madbury Road – Expansion of Apartments, the Notice of Decision, and Site Plan approval located on Map 2, Lot 10-3 as amended this evening; SECONDED by Mr. McGowan; APPROVED by a vote of 7-0, Motion carries.***

**IX. *Public Hearing - 19-21 Main Street – Parking Lot.*** Formal site plan and conditional use application for parking lot as principal use on four lots and reconfiguration of the entrance. Toomerfs, LLC c/o Pete Murphy and Tim Murphy, owners. Mike Sievert, engineer. Robbi Woodburn, Landscape Architect. Map 5, Lots 1-9, 1-10, 1-15, and 1-16. Church Hill District.

***\*POSTPONED AT THE APPLICANT'S REQUEST TO MAY 11***

**X. Other Business**

**XI Review of Minutes (new): March 23, 2022**

Mr. Bubar said his correction submitted to Karen is already in the packet.

***Mr. Bubar MOVED to approve the meeting minutes of March 23, 2022, as corrected; SECONDED by Vice-Chair Parnell; APPROVED 7-0, motion carries.***

**XII. Adjournment**

***Mr. Kelley MOVED to adjourn the meeting; SECONDED by Mr. McGowan; APPROVED 7-0, motion carries.***

Mr. Behrendt said the Board will meet May 11 with a Workshop on May 18 and a regular meeting on May 25, 2022; he did not expect the 3 meetings/month to continue much longer.

Chair Rasmussen adjourned the meeting at 9:19 pm.

Respectfully submitted,  
Patricia Denmark, Minute Taker  
Durham Planning Board

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James Bubar, Secretary